

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill authorizes courts to order arrested persons who are in the custody of the Department of Corrections to remain in the department's custody pending transportation and transfer to the sheriff of the county in which the indictment, information, or affidavit is filed.

B. EFFECT OF PROPOSED CHANGES:

In 2003, three inmates of Charlotte Correctional Institution were arrested for the murder of Correctional Officer Darla Lathrem and a fellow inmate during an alleged escape attempt. All three inmates were serving life sentences at the time of the murder and have violent criminal histories. Subsequent to the attacks, the Department of Corrections (Department) transferred the three inmates to Florida State Prison (FSP), a maximum security institution. After the defendants were indicted¹, counsel for one of the defendants moved the court to have the defendants transferred to the Charlotte County jail pending trial, pursuant to s. 907.04, F.S.² Over the objection of the Sheriff and the State, the trial court interpreted s. 907.04, F.S., as mandating that the defendants be held in the custody of the Charlotte County Sheriff in the county jail pending disposition of the charges. At this time, the defendants are still being housed at the Charlotte County jail.

Currently, if a state prisoner is arrested (either for a crime committed while incarcerated or for a crime committed prior to being incarcerated), an outside law enforcement agency³ (usually the sheriff of the county where the alleged crime occurred) comes to the state institution, arrests the prisoner, assumes temporary custody of the prisoner, and transports the prisoner to a county facility.⁴ Currently, counties generally return such prisoners to the prisoner's state institution when the prisoner is no longer needed in court or when a prisoner does not have impending court dates.⁵ If the prisoner's presence is later required in court, the sheriff returns to the state institution, assumes temporary custody of the prisoner, and transports the prisoner to a county facility.⁶

This bill gives courts the authority to order arrested persons who are in the custody of the Department at the time of arrest to remain in the Department's custody pending transportation and transfer to the custody of the sheriff of the county in which the indictment, information, or affidavit is filed.

¹ The defendants were indicted on charges of capital murder and escape.

² Section 907.04, F.S., states in part that if a person who is arrested does not have a right to bail for the offense charged, he or she shall be delivered immediately into the custody of the sheriff of the county in which the indictment, information, or affidavit is filed.

³ Pursuant to s. 944.31, F.S., Department of Corrections' inspectors who have been designated by the Secretary as law enforcement officers have the authority to arrest state prisoners, but only in certain circumstances. Correctional officers do not have arrest powers. Thus, in most instances, it is not a Department of Corrections' employee who arrests inmates who have committed a crime, but rather an outside law enforcement agency.

⁴ Representatives with the Department state that there are occasions where the Department transports a prisoner to a county facility.

⁵ Prisoners must be returned to the state institution from which they came. Thus, if a prisoner has numerous court proceedings to attend in a short time-frame, a county that is geographically far away from a prisoner's institution (i.e. the prisoner is incarcerated in north Florida and the new arrest originates from Dade county) may elect to keep the prisoner in a county facility rather than transport the prisoner back and forth across the state numerous times. Counties can also request that DOC transfer a prisoner to a state institution that is closer to the arresting county, though this is not always possible due to lack of bed space, security concerns, etc...

⁶ Section 944.17(8), F.S., states in part that if a state prisoner's presence is required in court for any reason after the sheriff has relinquished custody to the Department of Corrections, the court shall issue an order for the sheriff to assume temporary custody and transport the prisoner to the county jail pending the court appearance.

C. SECTION DIRECTORY:

Section 1. Amends s. 907.04, F.S.; providing that if a person is arrested, and at the time of the arrest is in the custody of the Department under sentence of imprisonment, the court may order that person to remain in the Department's custody pending transportation and transfer to the custody of the sheriff of the county in which the indictment, information, or affidavit is filed.

Section 2. This act takes effect on July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

State Government

The Department states that data to determine the approximate number of inmates this bill would affect is unavailable. However, it appears that counties currently return many state prisoners who have been arrested to state institutions once the prisoner does not have any impending court dates. Thus, because the bill appears to codify an act that, in large part, is currently being practiced, it would not appear to have a significant fiscal impact.

Local Government

In some instances, a prisoner may be housed in a prison that is hundreds of miles from the county where the charging document was filed (i.e. the prisoner is incarcerated in north Florida and the new arrest originates from Dade county). If a court orders that the Department retain custody of such prisoner, and that prisoner later has a court appearance, the sheriff will be responsible for transporting the prisoner from the state institution to the county where the charging document is filed.⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

⁷ s. 944.17(8), F.S.

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As drafted, the bill would allow a court to order a state prisoner who has been arrested to remain in the Department's custody *pending transportation and transfer to the custody of the sheriff in the county of the county in which the indictment, information, or affidavit is filed, as necessary for further proceedings*. However, in most cases where a state prisoner is arrested, the sheriff assumes temporary custody of the prisoner from the Department and transports the prisoner to a county facility within 24 hours.⁸ Thus, the bill's language authorizing a court to order such an inmate to remain in the Department's custody *pending transportation and transfer to the custody of the sheriff* has little effect. This issue could be resolved by adding language authorizing a court to order the inmate to remain in the Department's custody *pending disposition of the inmate's new charge, or until the inmate's underlying sentence of imprisonment expires, whichever is earlier*.

As noted above, counties currently return arrested state prisoners to state institutions if the prisoner has no impending court dates. This current practice does not require a court order. However, the bill states that *the court may order* an arrested state prisoner to remain in the Department's custody pending transportation and transfer to the sheriff. As drafted, this language may be construed to *require* a court order in order to have an arrested inmate remain in the Department's custody. Amending the bill in the following manner would eliminate this concern: "If the person who is arrested is, at the time of arrest, in the custody of the Department of Corrections under sentence of imprisonment, unless otherwise ordered by the court, such person shall remain in the department's custody pending..."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

⁸ Fla. R. Crim. Proc. 3.130, states that every arrested person must be taken before a judicial officer within 24 hours of arrest. Section 944.17(8), F.S., requires the sheriff to assume temporary custody of state prisoners whose presence is required in court and transport them to a county facility.